

# United States Senate

WASHINGTON, DC 20510

April 7, 2017

The Honorable Scott Pruitt  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Pruitt:

Prior to your confirmation as Administrator, you committed to avoid actual or apparent conflicts of interest. We write to request information on the actions you have taken to address likely conflicts created by your role in representing the State of Oklahoma in litigation challenging the EPA's Clean Power Plan. On the same day that President Trump issued his March 28, 2017 Executive Order on Energy Independence you took two significant actions with respect the Clean Power Plan. You signed a Federal Register "Notice of Review of the Clean Power Plan." You also filed a Motion to Hold Cases in Abeyance in *State of West Virginia, et al. v. United States Environmental Protection Agency, et al.* (Circuit Court of Appeals for the District of Columbia, USCA Case #15-1363), the very case in which you represented the State of Oklahoma. Two days later, on March 30, you sent a letter to 47 governors propounding a legal interpretation of the effect of the Supreme Court's stay of the Clean Power Plan, a stay which you yourself sought in your capacity as Attorney General of Oklahoma. We believe you are required to have secured authorization from the Environmental Protection Agency's Designated Agency Ethics Officer (DAEO) to participate in these matters. We seek your written confirmation that such authorization has been granted, or that you will recuse yourself from these matters going forward.

In your January 3, 2017, Ethics Agreement,<sup>[1]</sup> you stated that for a one-year period, you "will seek authorization to participate personally and substantially in particular matters involving specific parties in which I know the State of Oklahoma is a party or represents a party." This commitment was reiterated in a January 16, 2017 response to a January 12 letter sent by nine Members of the Environment and Public Works Committee from Kevin Minoli, EPA's Designated Agency Ethics Official (DAEO) and Principal Deputy General Counsel, which also stated:

"Pursuant to the impartiality rules, any court case is considered a specific party matter. Thus, if the State of Oklahoma is a party or represents a party in a particular piece of litigation, Mr. Pruitt's ethics agreement includes a commitment to seek authorization to participate personally and substantially in that litigation. Should Mr. Pruitt seek authorization to participate in any litigation in which a person with whom he has a covered relationship is a party or represents a party, as stated above, the EPA Designated

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<sup>[1]</sup>[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C3B4C444EB20D1FD852580C1002C7A75/\\$FILE/Pruitt,%20Edward%20Scott%20%20%20finalAMENDEDEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/C3B4C444EB20D1FD852580C1002C7A75/$FILE/Pruitt,%20Edward%20Scott%20%20%20finalAMENDEDEA.pdf)

Agency Ethics Official would consider the factors set forth in 5 C.F.R. section 2635.502(d)(1)-(6) for purposes of compliance with the federal ethics rules.”

Additionally, in response to questions for the record submitted to the Committee on Environment and Public Works you stated:

“As EPA Administrator I will recuse [sic] from participation in litigation in matters in which I represented the State of Oklahoma, unless I receive informed consent from the State of Oklahoma and the permission of relevant federal ethics officials.”

Beginning in August 2014, you filed actions in both the U.S. Circuit Court of Appeals for the District of Columbia (*West Virginia v. EPA*) and the Northern District of Oklahoma challenging the Clean Power Plan on behalf of the State of Oklahoma.

In the March 28 Notice you state that “EPA is initiating ... review of the CPP”, and that “EPA’s review will be followed by a rulemaking process” if the review determines that a rulemaking is appropriate. In part on the basis of that Notice, the EPA moved the D.C. Circuit Court of Appeals on March 28 to hold cases consolidated under *West Virginia v. EPA* in abeyance.

We all continue to believe<sup>[2]</sup> that you should have committed to recuse yourself extensively from a number of matters during your confirmation process. Nevertheless, your anticipation of, and preparation for, signing of the Federal Register Notice and filing of the Motion in the DC Circuit should have triggered the more limited recusal policy to which you have already and repeatedly agreed.

In light of: 1) your Ethics Agreement; 2) the response of EPA’s DAEO to the January 12 letter; 3) your representations to the Environment and Public Works Committee during your confirmation process; 4) your role representing the State of Oklahoma in litigation challenging the Clean Power Plan; and 5) the March 28 Notice and the March 28 Motion, please respond to the following requests in writing and provide copies of all documentation supporting your responses:

1. Other than the actions you took on March 28, have you recused yourself from the actions concerning the Clean Power Plan specified in the March 28 Notice, and, if so, to what extent have you done so?
2. If not, why not? If you have recused yourself from these matters, please provide the name(s) and identify the position(s) of the individual(s) you have directed to act in your stead.
3. Have you sought authorization to participate in those actions from the DAEO – and if you have done so, when did you do so? Please provide a copy of any written material submitted to the DAEO in making, or following up on, that request.
4. Has the DAEO granted such authorization, and if so, has the authorization included any restrictions or limitations on your participation? Please provide a copy of any written material conveying the DAEO’s response.

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<sup>[2]</sup> <http://www.markey.senate.gov/imo/media/doc/Pruitt%20recusal%20letter%2002.16.17.pdf>

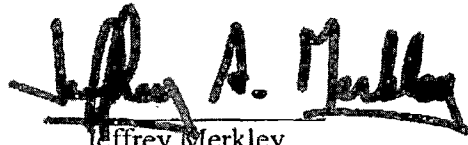
5. If you have neither been recused from participation in this matter nor sought authorization from the DAEO to participate in the actions specified in the March 28 Notice with respect to the Clean Power Plan, please explain why you have not.
6. Have you requested or received a waiver to participate personally and substantially in any other particular matters involving specific parties in which the State of Oklahoma is a party or represents a party? If so, please provide copies of all such requests and all such grants from the DAEO.

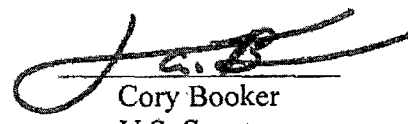
Please provide your responses to these inquiries and requests by no later than April 21, 2017. If you have any questions about these requests, please feel free to contact Michal Freedhoff or Joseph Goffman at the Committee on Environment and Public Works at 202-224-8832. We very much appreciate your prompt attention to this matter.

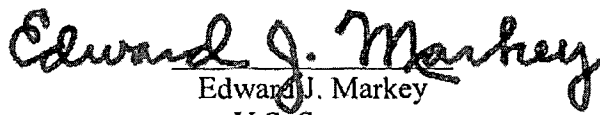
Sincerely,

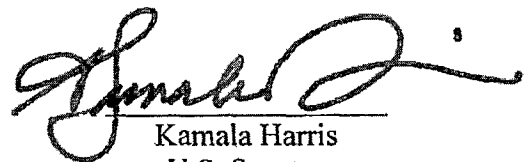
  
Tom Carper  
Ranking Member

  
Sheldon Whitehouse  
U.S. Senator

  
Jeffrey Merkley  
U.S. Senator


  
Cory Booker  
U.S. Senator

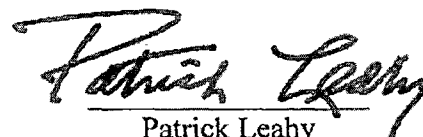
  
Edward J. Markey  
U.S. Senator

  
Kamala Harris  
U.S. Senator

  
Maria Cantwell  
U.S. Senator

  
Richard Durbin  
U.S. Senator

  
Richard Blumenthal  
U.S. Senator

  
Patrick Leahy  
U.S. Senator

